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8 *Attorneys for Complainant*

10 **BEFORE THE**
11 **MEDICAL BOARD OF CALIFORNIA**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against,

14 **JOSEPH STRUZZO, M.D.**
15 **35371 Calle Solana**
Cathedral City, CA 92234

16 **Physician's and Surgeon's Certificate**
17 **No. C 21227**

18 One.

Case No. 800-2015-016335

DEFAULT DECISION
AND ORDER

[Gov. Code, §11520]

19 **FINDINGS OF FACT**

20 1. On or about January 30, 2017, Complainant Kimberly Kirchmeyer, in her official
21 capacity as the Executive Director of the Medical Board of California (Board), Department of
22 Consumer Affairs, filed Accusation No. 800-2015-016335 against Joseph Struzzo, M.D.,
23 (Respondent) before the Board.

24 2. On or about October 19, 1959, the Board issued Physician's and Surgeon's Certificate
25 No. C 21227 to Respondent Joseph Struzzo, M.D. (Respondent). The Physician's and Surgeon's
26 Certificate was in full force and effect at all times relevant to the charges brought herein and will

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1 expire on October 31, 2017, unless renewed. A true and correct copy of Respondent's certified
2 license history is attached as Exhibit 1 to the accompanying Default Decision Evidence Packet¹.

3 3. On or about December 29, 2016, Respondent entered into a Stipulated Interim
4 Suspension prohibiting Respondent from practicing medicine in the State of California pending
5 further order from the Office of Administrative Hearings. (Exhibit 2, Stipulation of the Parties re
6 Interim Order of Suspension and Order.)

7 4. On or about January 3, 2017, Respondent sent the Board an Application for
8 Voluntary Surrender of License. (Exhibit 3, Letter from Respondent to the Board dated January
9 3, 2017.)

10 5. On or about January 30, 2017, Robyn Fitzwater, an employee of the Board, served by
11 Certified and First Class Mail a copy of the Accusation No. 800-2015-016335, Statement to
12 Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,
13 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is 35371
14 Calle Solana, Cathedral City, CA 92234. A true and correct copy of the Accusation, the related
15 documents, and Declaration of Service are attached as Exhibit 4.

16 6. On or about February 21, 2017, the Board sent Respondent a letter stating they were
17 unable to approve his Application for Voluntary Surrender of Licensure until the matter of the
18 pending disciplinary action was resolved. (Exhibit 5, Letter from the Board to Respondent dated
19 February 21, 2017.)

20 7. On or about March 17, 2017, the Accusation and related documents were returned by
21 the U.S. Postal Service marked "Returned to Sender-Unclaimed, Unable to Forward." A true and
22 correct copy of the envelope returned by the post office is attached as Exhibit 6.

23 8. On or about March 30, 2017, Deputy Attorney General Joseph F. McKenna III mailed
24 a courtesy letter to Respondent informing him that he had failed to submit a Notice of Defense,
25 and if it was not received by April 10, 2017, a Default would be filed against him. Respondent
26 did not send a Notice of Defense to Deputy Attorney General Joseph F. McKenna III by April 10,

27 ¹ All exhibits are true and correct copies of the originals, and are attached to the accompanying Default
28 Decision Evidence Packet. The Default Decision Evidence Packet is hereby incorporated by reference, in its entirety,
as if fully set forth herein.

1 2017, or at any time thereafter. (Exhibit 7, Letter from Deputy Attorney General Joseph F.
2 McKenna III to Respondent dated March 30, 2017; Exhibit 9, Declaration of Deputy Attorney
3 General Joseph F. McKenna III.)

4 9. On or about May 30, 2017, Respondent's counsel, Jeffrey G. Keane, Esq., sent a
5 letter to Deputy Attorney General Joseph F. McKenna III stating that he was unable to locate
6 Respondent and could not accept service of the accusation on his behalf. (Exhibit 8, Letter from
7 Jeffrey G. Keane, Esq., to Deputy Attorney General Joseph F. McKenna III dated May 30, 2017;
8 Exhibit 9, Declaration of Deputy Attorney General Joseph F. McKenna III.)

9 10. Service of the Accusation was effective as a matter of law under the provisions of
10 Government Code section 11505, subdivision (c).

11 11. Government Code section 11506 states, in pertinent part:

12 "...

13 "(c) The Respondent shall be entitled to a hearing on the merits if the
14 Respondent files a notice of defense, and the notice shall be deemed a specific denial
15 of all parts of the accusation not expressly admitted. Failure to file a notice of
16 defense shall constitute a waiver of Respondent's right to a hearing, but the agency in
17 its discretion may nevertheless grant a hearing."

18 12. Respondent failed to file a Notice of Defense within fifteen (15) days after service
19 upon him of the Accusation No. 800-2015-016335 (Exhibit 9, Declaration of Deputy Attorney
20 General Joseph F. McKenna III), and, therefore, has waived his right to a hearing on the merits of
21 Accusation No. 800-2015-016335.

22 13. California Government Code section 11520 states, in pertinent part:

23 "(a) If the Respondent either fails to file a notice of defense, or, as applicable,
24 notice of participation, or to appear at the hearing, the agency may take action based
25 upon the Respondent's express admissions or upon other evidence and affidavits may
26 be used as evidence without any notice to Respondent

27 "..."

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14. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on Respondent's express admissions by way of default and the evidence before it, contained in Exhibits 1 through 10, in the separate accompanying "Default Decision Evidence Packet," finds that the charges and allegations in Accusation No. 800-2015-016335, and each of them, separately and severally, are true and correct.

JURISDICTION

15. Section 820 of the Code states:

“Whenever it appears that any person holding a license, certificate or permit under this division² or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licentiate’s ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate and may be received as direct evidence in proceedings conducted pursuant to Section 822.”

16. Section 822 of the Code states, in pertinent part:

“If a licensing agency determines that its licensee’s ability to practice his or her profession safely is impaired because the licensee is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:

“(a) Revoking the licentiate’s certificate or license.

“(b) Suspending the licentiate’s right to practice.

“(c) Placing the licentiate on probation.

“(d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper.

² Division 2 of the Business and Professions Code entitled, “Healing Arts.”

1 “...”

2 17. Section 824 of the Code states:

3 “(d) The licensing agency may proceed against a licensee under either Section
4 820, or 822, or under both sections.”

5 **BUSINESS AND PROFESSIONS CODE CAUSE OF ACTION**

6 18. Respondent’s Physician’s and Surgeon’s Certificate No. C 21227 is subject to action
7 under section 822, of the Code, in that his ability to practice medicine safely is impaired because
8 he is mentally ill, or physically ill affecting competency, as more particularly alleged hereinafter:

9 19. Since 1999, Respondent has been the sole owner and practitioner of a general medical
10 practice providing medical care and treatment to patients in the community of Desert Hot Springs,
11 California.

12 20. On or about March 30, 2016, Respondent was interviewed by Division of
13 Investigation’s Health Quality Investigation Unit Supervising Investigator C.M. on behalf of the
14 Board. During a discussion of numerous entries for controlled substances appearing on
15 Respondent’s extensive Controlled Substance Utilization Review & Evaluation System (CURES)
16 report for his prescribing history, Respondent repeatedly asserted that he had not written
17 numerous drug prescriptions identified in his CURES report, either because he did not write
18 prescriptions for certain drugs or because he did not write drug prescriptions for such high
19 quantities. Respondent further explained that he had no explanation for how certain prescriptions
20 for controlled substances came to be listed under his Drug Enforcement Administration number,
21 except that perhaps someone had “forged” the prescriptions. Respondent also denied issuing any
22 prescriptions to a patient for oxycodone or hydrocodone even though his CURES report indicated
23 that he had written several prescriptions for these drugs to the patient. At the conclusion of the
24 subject interview, Respondent agreed to submit to a physical examination.

25 21. Pursuant section 820 of the Code, at the request of the Board, Respondent voluntarily
26 presented to a doctor chosen by the Board for a physical examination. On May 9, 2016,
27 Respondent attended a physical examination performed by R.H., M.D. As part of Respondent’s
28 physical examination, Dr. R.H. administered the Saint Louis University Mental Status

1 Examination, a screening test for dementia, and Respondent scored only 19 out of 30. A score of
2 less than 21 signifies dementia. In a report prepared for the Board, Dr. R.H. opined that
3 Respondent had "a disabling condition (i.e., dementia) that prevents him from practicing
4 medicine safely. Although the cause of his dementia is probably Alzheimer's disease, a disease
5 that is not reversible, reversible causes of dementia need to be ruled out." Dr. R.H. recommended
6 that Respondent be screened for hypothyroidism and Vitamin B12 deficiency, to rule out
7 reversible causes of dementia.

8 22. Pursuant section 820 of the Code, at the request of the Board, Respondent voluntarily
9 presented to a doctor chosen by the Board for a neuropsychological examination.

10 23. On July 16, 2016, Respondent attended a neuropsychological fitness-for-duty
11 examination performed by David C. Anderson, Ph.D. The neuropsychological evaluation showed
12 that Respondent had a very serious memory disorder with confabulatory tendencies, and also
13 demonstrated that he had a language deficit characterized by word finding difficulty which very
14 likely exacerbated his memory deficits. In a report prepared for the Board, Dr. D.A. found that
15 Respondent met DSM-5 diagnostic criteria for Unspecified Neurocognitive Disorder Without
16 Behavioral Disturbance. Dr. D.A. opined that the nature and severity of Respondent's memory
17 impairment would pose a significant problem in the day-to-day functioning of a physician and
18 that he was not competent to practice medicine at the present time. (Exhibit 10, Declaration of
19 David C. Anderson, Ph.D.(redacted).)

20 **DETERMINATION OF ISSUES**

21 1. Based on the foregoing findings of fact, Respondent Joseph Struzzo, M.D., has
22 subjected his Physician's and Surgeon's Certificate No. C 21227 to action.

23 2. The agency has jurisdiction to adjudicate this case by default.

24 3. Pursuant to its authority under California Government Code section 11520, and based
25 on the evidence before it, the Board hereby finds that the charges and allegations contained in
26 Accusation No. 800-2015-016335, and the Findings of Fact contained in paragraphs 1 through 23,
27 above, and each of them, separately and severally are true and correct.

28 ////

4. Pursuant to its authority under California Government Code section 11520, and by reason of the Findings of Fact contained in paragraphs 1 through 23, above, and Determination of Issues 1, 2, and 3, above, the Board hereby finds that Respondent Joseph Struzzo, M.D., has subjected his Physician's and Surgeon's Certificate No. C 21227 to action in that the nature and severity of Respondent's memory impairment would pose a significant problem in the day-to-day functioning of a physician and that he was not competent to practice medicine at the present time.

ORDER


IT IS SO ORDERED that Physician's and Surgeon's Certificate No. C 21227, heretofore issued to Respondent Joseph Struzzo, M.D., is revoked.

If Respondent ever files an application for relicensure in the State of California, the Board shall treat it as a petition for reinstatement of a revoke license. Respondent must comply with all laws, regulations and procedures for reinstatement of a revoked license at the time that the application for relicensure or petition for reinstatement is filed.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on August 4, 2017 at 5:00 p.m.

It is so ORDERED July 5, 2017


FOR THE MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
KIMBERLY KIRCHMEYER
EXECUTIVE DIRECTOR

KATHLEEN A. KENEALY
Acting Attorney General of California
ALEXANDRA M. ALVAREZ
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Attorneys for Complainant

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 800-2015-016335

JOSEPH STRUZZO, M.D.
35371 Calle Solana
Cathedral City, California 92234

ACCUSATION

Physician's and Surgeon's Certificate No.
C 21227,

Respondent.

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California (Board), Department of Consumer Affairs.

2. On or about October 19, 1959, the Board issued Physician's and Surgeon's Certificate No. C 21227 to Joseph Struzzo, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2017, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 820 of the Code states:

“Whenever it appears that any person holding a license, certificate or permit under this division¹ or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licentiate’s ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate and may be received as direct evidence in proceedings conducted pursuant to Section 822.”

5. Section 822 of the Code states, in pertinent part:

“If a licensing agency determines that its licentiate’s ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:

“(a) Revoking the licentiate’s certificate or license.

“(b) Suspending the licentiate’s right to practice.

“(c) Placing the licentiate on probation.

“(d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper.

“...”

6. Section 824 of the Code states:

“(d) The licensing agency may proceed against a licentiate under either Section 820, or 822, or under both sections.”

¹ Division 2 of the Business and Professions Code entitled, “Healing Arts.”

SECTION 822 CAUSE FOR ACTION

(Mental or Physical Illness Affecting Competency)

7. Respondent's Physician's and Surgeon's Certificate No. C 21227 is subject to action under section 822 of the Code in that his ability to practice medicine safely is impaired because he is mentally ill, or physically ill affecting competency, as more particularly alleged hereinafter:

8. Since 1999, Respondent has been the sole owner and practitioner of a general medical practice providing medical care and treatment to patients in the community of Desert Hot Springs, California.

9. On or about March 30, 2016, Respondent was interviewed by Division of Investigation's Health Quality Investigation Unit Supervising Investigator C.M. on behalf of the Board. During a discussion of numerous entries for controlled substances appearing on Respondent's extensive Controlled Substance Utilization Review & Evaluation System (CURES) report for his prescribing history, Respondent repeatedly asserted that he had not written numerous drug prescriptions identified in his CURES report, either because he did not write prescriptions for certain drugs or because he did not write drug prescriptions for such high quantities. Respondent further explained that he had no explanation for how certain prescriptions for controlled substances came to be listed under his Drug Enforcement Administration number, except that perhaps someone had "forged" the prescriptions. Respondent also denied issuing any prescriptions to a patient for oxycodone or hydrocodone even though his CURES report indicated that he had written several prescriptions for these drugs to the patient. At the conclusion of the subject interview, Respondent agreed to submit to a physical examination.

10. Pursuant section 820 of the Code, at the request of the Board, Respondent voluntarily presented to a doctor chosen by the Board for a physical examination.

A. Physical Examination:

On May 9, 2016, Respondent attended a physical examination performed by R.H., M.D.² As part of Respondent's physical examination, Dr. R.H. administered

² Dr. R.H. is board certified in both Internal Medicine and Geriatric Medicine.

1 the Saint Louis University Mental Status Examination, a screening test for
2 dementia, and Respondent scored only 19 out of 30. A score of *less* than 21
3 signifies dementia. In a report prepared for the Board, Dr. R.H. opined that
4 Respondent had "a disabling condition (i.e., dementia) that prevents him from
5 practicing medicine safely. Although the cause of his dementia is probably
6 Alzheimer's disease, a disease that is not reversible, reversible causes of dementia
7 need to be ruled out." Dr. R.H. recommended that Respondent be screened for
8 hypothyroidism and Vitamin B12 deficiency, to rule out reversible causes of
9 dementia.³

10 11. Pursuant section 820 of the Code, at the request of the Board, Respondent voluntarily
11 presented to a doctor chosen by the Board for a neuropsychological examination.

12 A. Neuropsychological Examination:

13 On July 16, 2016, Respondent attended a neuropsychological fitness-for-duty
14 examination performed by Dr. D.A., Ph.D.⁴ The neuropsychological evaluation
15 showed that Respondent had a very serious memory disorder with confabulatory
16 tendencies, and also demonstrated that he had a language deficit characterized by
17 word finding difficulty which very likely exacerbated his memory deficits. In a
18 report prepared for the Board, Dr. D.A. found that Respondent met DSM-5
19 diagnostic criteria for Unspecified Neurocognitive Disorder Without Behavioral
20 Disturbance.

21 12. Dr. D.A. opined that the nature and severity of Respondent's memory impairment
22 would pose a *significant* problem in the day-to-day functioning of a physician and that he was *not*
23 competent to practice medicine at the present time.

24 ////

25 ////

26 _____
27 ³ Blood tests later showed normal levels of Vitamin B12 and folate for Respondent.

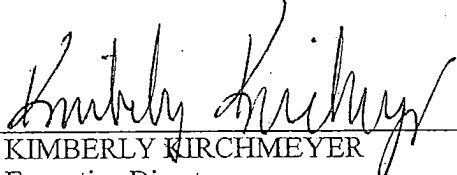
28 ⁴ Dr. D.A. is board certified in both Clinical Neuropsychology and Clinical Psychology.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate No. C 21227, issued to Respondent Joseph Struzzo, M.D.;
2. Revoking, suspending or denying approval of Respondent Joseph Struzzo, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;
3. Taking action as authorized by section 822 of the Code as the Medical Board, in its discretion, deems necessary and proper; and
4. Taking such other and further action as deemed necessary and proper.

DATED: January 30, 2017


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant